IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1378 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARHARI VASUDEV PANCHOLI & 3 - Appellant(s)
Versus
LAND ACQUISITION OFFICER (ON SPECIAL DUTY) & 2 - Defendant(s)

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Appearance :

MR RN SHAH for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 3.2.1, 3.2.2, 3.2.3,3.2.4 - 4.None for Appellant(s) : None for Petitioner No(s).: for Appellant(s) : 2 - 3.
GOVERNMENT PLEADER for Defendant(s) : 1, 3,
None for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 23/04/2007

ORAL JUDGMENT

1. The present appeal arises against the judgement and

the award passed by the reference court dated 28.02.1996 whereby the reference is dismissed.

2. The short facts appear to be that the proposal was moved for acquisition of the land belonging to the appellants admeasuring 1 Hectare 19 Are 38 Sq. Mtrs. (11,938 Sq. Mtrs) situated at village Wadhwan. Thereafter, notification under section 4 of Land Acquisition Act (hereinafter referred to “as to the Act”) was published on 08.11.1979. The notification under section 6 of the Act was published on 04.11.1982 and emergency clause was applied and the possession was taken over on 30.12.1983. It appears that thereafter notice under section 9 of the Act was served on 28.11.1983 and the land owners/claimants demanded price at Rs. 60 per Sq. Yard. The Land Acquisition Officer passed the award on 20.05.1986 and awarded compensation at Rs. 50,000/- (Rs. 4.18 per Sq. Mtrs.). He also awarded statutory benefit of the interest at the rate of 12 percent from the date of taking over the possession, the solatium at the rate of 30 percent and further interest at the rate of 9 percent for the first year and 15 percent for the subsequent year. Land owners / appellants were not satisfied with the compensation and therefore they raised dispute which ultimately came to be referred to the reference court for adjudication in Reference Application No.

13 of 1986.

3. The reference court after adjudication found that the claimants have produced the copy of the sale-deed without examination of the purchaser, and the seller of those sale-deeds and ultimately concluded that the claimants have not produced any sufficient evidence to establish that the market value of the acquired land on the date of notification under section 4 was higher and therefore has dismissed the reference vide judgement dated 28.02.1996. It is under these circumstances the present appeal before this court.

4. Heard Mr. Shah, Learned Advocate for the appellant and Mr. Chhaya, Learned A.G.P. for respondent nos. 1 and 3. None has appeared for respondent no. 2. Considered the record and the proceedings of the reference court.

5. It does appear from the record and the proceedings of the reference court that the claimants in the evidence have produced certain records to show that the land was having the more potentiality, since, it is surrounded by other residential colonies, colleges, dairy etc. and further the copy of the index and sale-deed of the year April 1981 were produced and it was contended that in the said sale-deed the price is mentioned at Rs. 60/- per Sq. Mtrs., the claimants are entitled to the same price.

It is not in dispute that neither purchaser or seller of the said sale-deed was examined. Therefore, if the said evidence is discarded by the reference court it cannot be said that any error is committed by the reference court. Therefore, the said contention of Mr. Shah, that the reference court ought to have acted upon the sale-deed dated 16.04.1981 cannot be accepted and hence rejected.

6. The record and the proceedings further shows that on behalf of the State, map was produced on record and the perusal of the said map shows that the land in question which is under acquisition is situated on survey no. 1829 whereas for the adjoining land situated on survey no. 1830, there are sale instances which has also been referred by the Land Acquisition Officer in the award and such sale instance is dated 25.10.1978. The perusal of the award of the Land Acquisition Officer shows that he has considered vide instance no. 10 the said sale instance of the adjacent land and has assessed the price at Rs. 62,300/- per Hectare. However, he has discarded the sale instance on the ground that such sale is in favour of the adjoining land owner and is having more frontage, but he has also recorded that such sale instance deserves to be considered. If, the said sale instance dated 25.10.1978 is considered, the price of the just adjoining

agricultural land would come to be Rs. 6.23 per Sq. Mtrs as on 25.10.1978. The boundary of survey no. 1830 which is the land of the said sale-deed dated 25.10.1978 considered by Land Acquisition Officer touching to the land under Acquisition bearing survey no. 1829. Therefore if the principle of consideration of best sale instance from the award of the land acquisition officer is applied, it can be said that the price of the adjoining land on 25.10.1978 was of Rs. 6.23 per Sq. Mtrs. The other sale instance and included land for which the sale-deed came to be produced by the appellants are of the land across the road, they are non-agricultural land of a very small pieces of the land. Further those sale-deeds are of 16.04.1981 after notification under section 4 of the Act was published on 18.1.1979. Therefore, it appears that in view of the aforesaid facts and circumstances, the reliance cannot be placed upon the sale-deed dated 16.04.1981 for the purpose of assessing market value.

7. It appears to the court that the reliance can be placed upon sale instance which has been considered by the Land Acquisition Officer in the award and as observed earlier one of the best evidence of the sale-deed dated 25.10.1978 if considered the market value of the land can be said as Rs. 6.23 per Sq.

Mtrs on 25.10.1978. The notification under section 4 of the Act for land in question is published on 18.11.1979 and if the appreciation is considered per year at the rate of 10 percent, the market value can be said as at Rs. 6.85 per Sq. Mtrs. on the date when the notification under section 4 of the Act was published. As against the same compensation paid by the Land Acquisition Officer is at Rs. 4.18 per Sq. Mtrs. Therefore, the appellants-claimants can be said as entitle to the additional compensation at Rs. 2.67 per Sq. Mtrs. Hence ordered accordingly.

8. The Land Acquisition Officer in the award has granted statutory benefits to the land owners on the amount of compensation as per the scheme, since the award came to be published on 20.05.1986 after the amendment in the Act. As a consequence of the entitlement for the additional compensation at Rs. 2.67 per Sq. Mtrs, the appellants would also be entitled to proportionate interest at the rate of 12 percent from the date of taking over of the possession until the award and the solatium at the rate of 30 percent and the interest at the rate of 9 percent for the first year and 15 percent for the subsequent year as the case may be until the additional amount of compensation is paid or deposited in the court.

9. It is further clarified that in view of the decision

of the Apex Court in the case of ***Sunder vs. Union of India reported in AIR 2001 SC page 3517*** the appellants claimants would be entitled to the interest (at the rate of 9 percent for the first year and 15 percent for subsequent year) as the case may be on the amount of compensation plus proportionate interest at the rate of 12 percent and proportionate solatium at the rate of 30 percent. Hence ordered accordingly.

10. The appeal is partly allowed to the aforesaid extent. The appellants will be also be entitled to the proportionate cost to the extent of increased amount of the compensation at the rate of 2.67 per Sq. Mtrs. Decree accordingly.

(JAYANT PATEL,J.)

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